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Attorneys for Plaintiff Del Monte Fresh Produce N.A., Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

CV'07-1496 KI

DEL MONTE FRESH PRODUCE N.A.,
INC., dba DEL MONTE FRESH
PRODUCE CO., a Delaware corporation,

Case No. _____

COMPLAINT

Plaintiff,

v.

HEINZ NORTH AMERICA, a division of
H. J. HEINZ COMPANY, L.P., a Delaware
Limited Partnership, dba TRUESOUPS,

Defendant.

Plaintiff Del Monte Fresh Produce N.A., Inc., dba Del Monte Fresh Produce Co.,
a Delaware corporation ("Del Monte"), alleges as follows:

PARTIES, JURISDICTION AND VENUE

1.

Del Monte is a Delaware corporation with its principal place of business in
Miami, Florida. It operates a facility that processes fresh cut produce in Portland, Oregon.

2.

Defendant Heinz North America, a division of H. J. Heinz Company, L.P., a Delaware Limited Partnership, dba Truesoups, with its principal place of business in Pennsylvania. It operates a facility in Kent, Washington that produces various food products.

3.

Jurisdiction herein is proper pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the matter in controversy exceeds the sum of \$75,000.

4.

Jurisdiction herein is also proper pursuant to 28 U.S.C. § 1331. This case involves a claim under 7 U.S.C. § 499, *et seq.*, the Perishable Agricultural Commodities Act of 1930 (“PACA”).

5.

Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391.

BACKGROUND

6.

At all material times, defendant was licensed, or was subject to license, under PACA, as a dealer, commission merchant, and/or broker.

7.

From on or about December 22, 2006 through on or about August 8, 2007, Del Monte sold perishable agricultural commodities (the “Commodities”) in interstate commerce to defendant pursuant to written contracts. The agreed upon prices for the Commodities totaled \$785,374.16. Attached as Exhibit 1 is a spreadsheet showing the calculation of said sum.

8.

Del Monte shipped the Commodities by truck in interstate commerce from its Portland, Oregon facility to defendant's facility in Kent, Washington.

9.

Upon arrival of the Commodities at defendant's facility in Kent, Washington, defendant accepted the Commodities.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

10.

The foregoing paragraphs are incorporated herein by reference.

11.

Del Monte performed all conditions precedent pursuant to the contracts.

12.

The essential terms of the contracts were set forth in a series of purchase orders and invoices, and include price, quantity, delivery, and payment terms. The purchase orders and invoices are identified in Exhibit 2, attached hereto.

13.

Defendant has breached the contracts by failing to pay Del Monte the amounts due under the contracts and there is now due and owing from defendant to Del Monte the sum of \$785,374.16, plus interest at the contract rate of 1.5% per month.

14.

Del Monte is entitled to recover its reasonable attorney's fees and costs pursuant to the contracts.

SECOND CLAIM FOR RELIEF
(Perishable Agricultural Commodities Act)

15.

The foregoing paragraphs are incorporated herein by reference.

16.

Del Monte preserved its rights under the PACA trust provisions by setting forth the requisite statutory language on all of its invoices.

17.

The payment terms are set forth in writing on the purchase orders and invoices and do not exceed 30 days from the date of acceptance.

18.

Pursuant to PACA, defendant is required to hold \$785,374.16, plus interest at the rate of 1.5% per month, in trust for the benefit of Del Monte.

19.

Defendant's refusal to pay to Del Monte the monies held in trust referred to above constitutes a violation of Section 2 of PACA. There is now due and owing to Del Monte from defendant the sum of \$785,049.86, plus interest at the rate of 1.5% per month.

PRAYER FOR RELIEF

WHEREFORE, Del Monte prays for judgment as follows:

1. First Claim for Relief:

- a. For judgment against defendant in the sum of \$785,374.16, plus pre and post-judgment interest at the rate of 1.5% per month;
- b. For reasonable attorney's fees and costs; and

c. For such other costs, disbursements, and relief the Court deems appropriate.

2. Second Claim for Relief:

a. For judgment against defendant in the sum of \$785,374.16, plus pre and post-judgment interest at the rate of 1.5% per month;

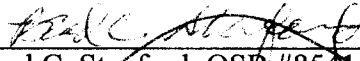
b. For an order directing defendant to pay the above sum from the PACA trust fund to Del Monte;

c. For costs and disbursements; and

d. For such other relief the Court deems appropriate.

DATED this 5 day of October, 2007.

FARLEIGH WITT

By: 
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[illegible]

Invoice	Trans	Original		\$39,407.00	22-30	31-60	61-90	91-180	Over 180
Number	PO #/Ref #	Date	Amount	Current	Days	Days	Days	Days	Days
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TRUESOUPS,		457084							
457084	TRUESOUPS, INC.	26401 7	9TH AVENUE SOUTH,	KENT, WA		WA K. JENNA X 2	\$ 70.00	\$ 253.00	872-0404
0FR0580	650047	22-Dec-06	\$ 6,236.00						\$ 604.42
0GF4297	711057	23-Mar-07	\$ 17,657.00					\$ 1,357.20	
0GF8550	712040	28-Mar-07	\$ 15,353.60					\$ 232.00	
0GH1355	713043	6-Apr-07	\$ 19,447.00					\$ 28.00	
0GN9558	637615-004	11-May-07	\$ 2,442.60					\$ 2,442.60	
0GN9662	637615-005	11-May-07	\$ 19,533.60					\$ 19,533.60	
0GR7133	637615-035	25-May-07	\$ 680.20					\$ 680.20	
0GU1145	637615-030	6-Jun-07	\$ 23,777.20				\$ 23,777.20		
0GU4478	637615-032	8-Jun-07	\$ 25,514.60				\$ 25,514.60		
0GU4484	637615-032	8-Jun-07	\$ 6,596.40				\$ 6,596.40		
0GV0914	637615-040	14-Jun-07	\$ 113.00				\$ 113.00		
0GV1658	637615-038	15-Jun-07	\$ 12,091.60				\$ 12,091.60		
0GV7439	637615-039	15-Jun-07	\$ 9,397.20				\$ 9,397.20		
0GV9586	637615-039	15-Jun-07	\$ 12,597.60				\$ 6,513.60		
0GW1422	637615-047	22-Jun-07	\$ 2,781.00				\$ 2,781.00		
0GW1433	637615-047	22-Jun-07	\$ 5,517.40				\$ 5,517.40		
0GW1435	637615-039	22-Jun-07	\$ 5,250.60				\$ 5,250.60		
0GW1437	SAMPLE	22-Jun-07	\$ 220.00				\$ 220.00		
0GW2891	637615-044	22-Jun-07	\$ 13,344.20				\$ 13,344.20		
0GW4124	637615-044	22-Jun-07	\$ 3,306.40				\$ 3,306.40		
0GW4735	637615-044	22-Jun-07	\$ 10,164.40				\$ 10,164.40		
0GW6225	637615-045	22-Jun-07	\$ 15,492.90				\$ 15,492.90		
0GW8215	637615-046	29-Jun-07	\$ 45,343.40			\$ 45,343.40			
0GX0120	637615-049	29-Jun-07	\$ 23,569.80			\$ 23,142.00			
0GX1687	637615-050	29-Jun-07	\$ 27,123.60			\$ 27,123.60			
0GX3714	637615-53	29-Jun-07	\$ 12,819.60			\$ 12,819.60			
0GX3730	637615-051	29-Jun-07	\$ 9,729.00			\$ 9,729.00			
0GX5422	CONNIE	29-Jun-07	\$ 13,120.00			\$ 13,120.00			
0GX7392	CONNIE	6-Jul-07	\$ 6,664.96			\$ 6,664.96			
0GX7395	CONNIE	6-Jul-07	\$ 12,987.52			\$ 12,987.52			
0GX7465	CONNIE	6-Jul-07	\$ 8,697.60			\$ 8,697.60			
0GX7467	CONNIE	13-Jul-07	\$ 13,458.24			\$ 13,458.24			
0GX7468	CONNIE	13-Jul-07	\$ 12,606.08			\$ 12,606.08			
0GX9398	CONNIE	6-Jul-07	\$ 13,458.24			\$ 13,458.24			
0GX9438	CONNIE	6-Jul-07	\$ 1,017.00			\$ 1,017.00			

0GY3644	637615-060	11-Jul-07	\$	20,512.80				\$ 20,512.80				
0GY3648	637615-061	13-Jul-07	\$	20,057.40				\$ 20,057.40				
0GY3653	637615-062	13-Jul-07	\$	22,327.20				\$ 22,327.20				
0GY3706	637615-063	13-Jul-07	\$	27,004.80				\$ 27,004.80				
0GY3711	637615-064	13-Jul-07	\$	23,748.60				\$ 23,748.60				
0GY3716	637615-065	18-Jul-07	\$	17,059.80				\$ 17,059.80				
0GY6798	637615-066	13-Jul-07	\$	83.60				\$ 83.60				
0HA4218	637615-068	18-Jul-07	\$	19,078.20				\$ 19,078.20				
0HA4244	637615-069	19-Jul-07	\$	26,422.80				\$ 26,422.80				
0HA5826	637615-070	20-Jul-07	\$	22,554.60				\$ 21,919.80				
0HA5829	637615-70	20-Jul-07	\$	6,955.20				\$ 6,955.20				
0HA7250	637615-071	20-Jul-07	\$	23,440.20				\$ 23,440.20				
0HA8974	637615072	20-Jul-07	\$	28,248.60				\$ 28,248.60				
0HA9974	637615-70	20-Jul-07	\$	1,725.00				\$ 1,725.00				
0HB0190	639192-001	20-Jul-07	\$	37.40				\$ 37.40				
0HB1965	637615-073	26-Jul-07	\$	9,592.20		\$	9,592.20					
0HB1973	637615-074	26-Jul-07	\$	15,265.40		\$	15,265.40					
0HB4079	637615-075	27-Jul-07	\$	25,555.20		\$	25,555.20					
0HB5480	637615-076	27-Jul-07	\$	10,363.80		\$	10,363.80					
0HB7218	637615-077	27-Jul-07	\$	20,518.20		\$	20,518.20					
0HB7227	637615-078	31-Jul-07	\$	8,086.80		\$	8,086.80					
0HC0751	IYPE	1-Aug-07	\$	2,058.00		\$	2,058.00					
0HC0757	637615-079	1-Aug-07	\$	28,576.80		\$	28,576.80					
0HC1946	637615-080	3-Aug-07	\$	31,335.20		\$	31,335.20					
0HC2394	637615-081	3-Aug-07	\$	11,596.00		\$	11,596.00					
0HC3809	637615-079	3-Aug-07	\$	207.00		\$	207.00					
0HC3819	637615-080	3-Aug-07	\$	483.00		\$	483.00					
0HC3863	637615-082	3-Aug-07	\$	9,142.00		\$	9,142.00					
0HC5588	637615-083	3-Aug-07	\$	9,660.00		\$	9,660.00					
0HC5589	637615-084	8-Aug-07	\$	11,309.40	\$ 11,309.40							
Total :				\$ 817,496.16	\$ -	\$ 11,309.40	\$ 182,439.60	\$ 458,788.64	\$ 140,080.50	\$ 24,273.60	\$ 604.42	
					\$ -	\$ 0.01	\$ 0.22	\$ 0.56	\$ 0.17	\$ 0.03	\$ 0.00	